

FEDERAL GRAND JURY RETURNS INDICTMENT AGAINST M'CARN

(Continued from page one)

Alexander Lindsay, Jr., special prosecutor in the case. McCarn was not present. The rear of the court room was well filled with those who had gathered to hear the latest development in the "McCarn-McBride affair." Twenty-one members of the grand jury were present; their names are given below.

When the court convened at 10 o'clock Foreman Riggs asked that a recess of ten minutes be taken, saying that the report would be ready to submit then. The ten minutes were hardly up before he indicated his readiness and the court was again called in session.

Before Judge Clemons received the report of the jury, he read a few excerpts from legal decisions and text books on the obligation of secrecy imposed upon the jurymen. The excerpts were to the point that there should be strict secrecy kept on the proceedings before a grand jury, both by the jurymen and the witnesses, and after the finding of bill as well as before.

In handing in the report, Mr. Riggs merely stated:

"I beg leave to report on a matter that has been under investigation by the grand jury since June 15."

No statement was made in court by any of the attorneys representing the indicted officer, or by Special Prosecutor Lindsay.

Legal Question Possible.
A question which may be the basis of a long legal fight comes up now with Mr. McCarn indicted by both the territorial and federal grand juries. It was rumored about the federal building this morning that the attorneys for the defendant are preparing a motion to dismiss which will be filed in the territorial circuit court, the grounds of the motion being that the federal court has assumed jurisdiction of the case, and therefore has the exclusive right to hear it.

An effort was made a few days ago to take the case out of the circuit court by a plea to the jurisdiction, but at that time the conditions were different, no indictment having been found against Mr. McCarn by the federal jury.

Special Assistant Lindsay's Statement.
"My duties as special assistant of the attorney-general now require me, I take it, to prosecute Mr. McCarn upon the indictment which has been found against him."

The grand jury made a careful investigation in the case, and thoroughly interrogated every witness available. This investigation began June 15, and did not end until yesterday noon, and in that time about 30 witnesses were brought before the investigators to be interrogated.

"I have received no new instructions from Washington. By yesterday's mail a letter arrived for me from the attorney-general, but it merely repeated the instructions I received by cable."

This communication reads in part as follows:

"Confirming my cablegram to you of this date, you are hereby appointed a special assistant to the attorney-general, and are empowered to conduct and prosecute all proper proceedings before grand juries and the courts in respect to matters relating to or growing out of the recent assault by one McBride upon United States Attorney McCarn in the federal building, Honolulu."

Commenting on these instructions, Mr. Lindsay said:

"It seems clear to me that it is intended I shall follow up the action taken by the grand jury by prosecuting the case. Mr. McCarn was ordered by the court to appear tomorrow morning to plead to the indictment. The question of bail is a matter left to the discretion of the court."

Judge Clemons and Judge Dole were seen by a representative of the Star-Bulletin, but they refused to make any comment on the case.

Mr. McCarn was escorted with his counsel the greater part of the morning. When word was sent to him requesting a statement for the press, he replied that he had nothing to say at this time, and his counsel did not volunteer a statement.

The grand jurors answering the roll call this morning, 21 in number, were as follows:

J. Morton Riggs, foreman; E. K. Devauchelle, Richard A. Cooke, Henry A. Giles, S. G. Wilder, William Geo. Kahler, Malcolm McIntyre, A. Henry Alton, J. Cooper, J. D. Holt, R. W. Warham, M. M. Johnson, John C. Kane, George E. McCristen, D. W. Douthitt, Arthur Berg, J. R. Galt, U. Tenney Peck, J. H. Dye, Charles N. Forbes and Albion F. Clark.

The members not present had been excused.

The Territorial Case.

The indictment found by the territorial grand jury was returned on the afternoon of Wednesday, June 10, in a report to Circuit Judge William J. Robinson. This indictment charges assault with a weapon obviously and imminently dangerous to life.

A strong fight has been made by McCarn's attorney to knock out the territorial indictment, a number of technical objections having been urged, all of which have been overruled. As the territorial case now stands, McCarn is ordered to appear and enter plea to the indictment next Saturday morning.

WOMEN TAUGHT FARMING METHODS IN SOUTH AFRICA

(By Latest Mail)

CAPE TOWN, South Africa.—A women's farm settlement has been started at Potchefstroom, in the Transvaal, for the purpose of giving educated women an opportunity of acquiring agricultural and household knowledge in order to fit them for farm life in South Africa.

No student will be admitted for less than six months or more than two years, by which time it is considered she should be fitted to take an active part in farming operations or to administer a farm of her own.

CHINESE FIRM GETS THE ARMY HOSPITAL JOB

The River Mill Co., a Chinese contracting concern, Chang Chan, president, which, as announced in the Star-Bulletin last Saturday was low bidder on the Fort Shafter hospital extension job, has been awarded the contract. The figure is \$118,930.

When bids were first opened it was thought that a combination of the River Mill Co.'s bid and that of George Yamada, for the three wing wards, would prove lowest, and that the work would be split between the two. Careful figuring, however, showed that the River Mill Co.'s total was lower by \$32 than the combination.

"It is more satisfactory to have the work done by a single concern," said Lieut.-col. Frank B. Cheatham, department quartermaster, this morning. "In this case it is the very best financial arrangement that can be made from the government standpoint."

A bond amounting to 50 per cent of the contract price has been furnished. The work is to be commenced June 25, and is to be completed in 230 working days.

The question of whether labor on construction work for the federal government should be restricted to citizens is not a new one. It has been considered a number of times heretofore, and a specific ruling made thereon by the secretary of war, in connection with a case arising in Honolulu, not long since," said Colonel Cheatham.

"Tenders were about to be called for certain construction work in Honolulu and it was proposed to insert therein a clause to the effect that only citizens, or those who had applied for naturalization, should be eligible to take or perform a contract."

Ruling by Secretary of War.

"It being questioned whether or not the quartermaster's department had the authority to insert such a clause in the call for tenders, the question was referred to the secretary of war, who in turn referred it to the judge advocate general, who rendered a legal opinion that, there being no law authorizing such a restriction, it would be illegal to insert it in the call for tenders."

"Upon such opinion the secretary of war ruled, and instructed the quartermaster's department in Hawaii, that there was no authority to restrict contractors or laborers upon army work to citizens."

DEATHS.

ALMEIDA.—In Honolulu, June 23, 1914, James Almeida, aged 77 years. Funeral from his late residence, 1835 Lono street, at half past three o'clock this afternoon. Interment at King street cemetery.

MARIA.—In Honolulu, June 23, 1914, Mrs. Emilia Maria, widow of Luis Maria, aged fifty-six years, a native of St. Michael, Azores.

GURNEY.—In Honolulu, June 24, Mrs. Margaret Gurney, wife of Alfred R. Gurney, Sr. Funeral at Central Union church, June 25, 3 p. m.; interment in Nuuanu cemetery.

"I'm looking up my family tree. What are the monkeys doing?"—Boston Transcript.

DISAGREEMENTS IN BOWER CASE DON'T DISCHARGE

Judge Clemons Denies Motion of Defendant's Attorneys; Important Question Ruled On

George A. (Bert) Bower, the chauffeur charged with a statutory crime involving the fall of a young girl, is not to go free of responsibility to the law because, in two successive federal court trials the juries have disagreed.

Judge Charles F. Clemons of the United States district court today denied the motion of Bower's counsel, E. A. Douthitt and L. M. Straus, who moved the discharge of the defendant in view of the jury disagreements. The Bower trial received wide attention because of the hideous charges made against the chauffeur in connection with the case and also because United States District Attorney Jeff McCarn, with his assistant, J. W. Thompson, prosecuted the charges and failed to get a conviction.

The decision of Judge Clemons, which involves important points far wider than the Bower case, says in part:

"Criminal Law—Practice—Application of Territorial Statutes to United States District Court: A statute in force in the Hawaiian Islands at the time of their annexation to the United States is continued in force in the territorial courts, providing that two successive trials in a criminal case shall operate as an acquittal, does not govern the United States district court for the territory of Hawaii."

The jury having disagreed in two successive trials of the defendant on an indictment for adultery, his counsel moved for his discharge on the ground of the applicability of section 2822 of the Revised Laws of Hawaii, providing in part as follows:

"The successive disagreement of two juries impaneled to try the cause, shall operate as an acquittal of the accused, and the court shall order his discharge from custody."

The defendant contends that this rule of territorial law, in force in Hawaii since 1875 (S. L., 1874, c. 40, s. 3), is made applicable to the federal court by section 33 of the Organic Act (31 Stat. c. 33, p. 157), which provides that "the laws of Hawaii relative to the judicial department, including civil and criminal procedure, except as amended by this act, are continued in force."

This contention overlooks the obvious fact that section 33 contemplates the "judicial department" of the territory and not that of the United States—not only as indicated by the words "judicial department" in their immediate context, but by the fact that chapter IV of the Organic Act, in which this section occurs, relates to "the judiciary of the territory" (see chapter title) and "the judicial power of the territory" (see section 31), and by the fact also that section 35, pertaining to the federal court, is placed in a separate, later chapter entitled "United States officers," thus distinguishing them from territorial officers provided for elsewhere.

Moreover, the contention is contrary to the well-settled intent of the Organic Act. "The territory of Hawaii is in every particular, except sovereignty, in the position of a state; certainly in that position so far as its courts are concerned. . . . The practice of the United States district court must, then, be governed in the same way as practice in the federal courts in the states."

This brings us to another contention, less strongly relied on by counsel but more difficult to dispose of than that section 2822 of the Revised Laws is effective here because in matters of practice not otherwise provided for, this court must follow the practice existing in Hawaii at the time of annexation. In support of this contention, reliance is had upon the ruling in *United States v. Moore*, 2 U. S. Dist. Ct. Haw. 65, and the cases therein cited.

In the *Moore* case and more recent cases of *United States v. Morimoto*, supra, as also in the cases of *United States v. Reid*, 12 Haw. 341; *Logan v. United States*, 144 U. S. 263; and *Witherup v. United States*, 157 Fed. 530, which the *Moore* and *Morimoto* cases follow, it was held that "the rules of evidence governing federal courts in criminal trials are those which were in force in the state (or territory) at the time such courts were established therein, subject to such changes as have been made by Congress." 127 Fed. 530, par. 2.

The reasoning of Chief Justice Taney in the leading case of *Reid*, supra, may seem to justify the following not only of such local rules of evidence, but of such local rules of practice in general, as were in force at the time of the establishment of the federal court in the particular district.

But the rule applied in the *Reid* case, and in the cited cases which follow it, was adopted as a rule of necessity. The supreme court there decided that, as the judiciary act referred the selection and qualification of jurors in United States courts to the practice then existing in the several states, respectively, it would seem necessarily to follow that the courts "were to be governed in like manner in the ulterior proceedings after the jury was sworn, where there was no law of Congress to the contrary." (It being noted that "ulterior proceedings" with the contemplation of the question before the court related only to the competency of witnesses—rules of evidence). 12 How. 361. 365—in other words, that as the judiciary act recognized the state practice at the time of the court's creation as governing the selection and qualification of jurors, the court,

LOCAL AND GENERAL

An order for the hearing of the petition for letters of administration of the estate of John A. O'Brien was made this morning by Judge Whitney.

The third annual report of the trustees of the George C. Beckley estate made their report today, which was filed in the circuit court, together with a master's account, which approved the account of the trustees.

Word has been received of the death in England of Andrew Dempster, who for a number of years resided at Lihue, Kauai. The late Mr. Dempster was well known to residents of Kauai and was highly respected for his many kindly acts.

One of the old-fashioned dinners will be the feature of the St. Louis College Alumni Association reunion at the college hall Saturday night. It will be a real good time with a crowd of the old boys to jollity. Those who have not arranged to go should see President Hollinger as soon as possible.

TONIGHT'S BAND PROGRAM.

Under the direction of Captain Henri Berger the Royal Hawaiian band will render the following program at Ala Park tonight, commencing at 7:30:

March—The Midnight Girl (new) . . . Philip
Overture—Tancredi . . . Rossini
Tango—Buenos Ayres (new) . . . Gumbie
Selection—Martha, (by request) . . .
Vocal—Hawaiian Songs . . . Ar. by Berger
Selection—Remicks, Hits (new) . . . Lampe
Tango—La Conchita (new) . . . Davis
Finale—Mustard (by request) . . . Ascher
The Star Spangled Banner.

SIRIUS

CHILLINGWORTH—At Wailuku, Maui, June 23, 1914, to Mr. and Mrs. William F. Chillingworth, a son.

for rules of practice governing the trial for which such jurors were selected and qualified, would recognize the same conventional authority as perhaps within the intent of the act. This conclusion, although not very clearly within the act, is yet in harmony with its spirit, especially with the safeguarding words, "where there is no law of Congress to the contrary." This is about as far as the supreme court could go in that direction. And the *Reid* case is not, in the opinion of this court, a precedent for recognizing authority in a Hawaiian statute existing at the time of annexation, by which the freedom of prosecutions under a federal statute is to be curtailed. Are not the acts of Congress by which this court is created and its powers given, necessarily, though impliedly, contrary to the local statutory rule? Do they not exclude it? Or, in other words, is not the local statute itself inconsistent with the federal statutes? The *Reid* case provides for an obvious necessity—an emergency. No such element exists in the case at bar. The situation is provided for by the natural course of things; there is no obstacle to further proceedings.

It is a startling proposition that a federal court should, in the absence of legislation, be compelled to follow every rule of practice in force in the local courts at the time the district is brought under federal jurisdiction, even, it may be, a century or more before—as in the case of the thirteen original colonies, or of the first admitted states—unless it be in cases of extreme necessity. And it is safe to say that no federal court regulates its practice in general by any such guide. No reason can be seen for giving unequal application to a rule which arose only as a rule of necessity; let it be applied in cases of necessity, but not where its application would curtail the court's inherent powers. For instance, must this court adopt the rest of section 2822 of the revised laws and declare an acquittal in every case in which there is "a failure to prosecute upon an information or indictment at the term at which the same is presented against the accused, unless the venue be changed or the case be postponed by the court?"

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QUEENSLAND HAS SPONGE INDUSTRY

(By Latest Mail)

BRISBANE, Queensland.—A big scheme has been completed by Messrs. Leonal Cloney & Co. to exploit the great beds of sponge at Thursday Island. The firm expects to start operations before June next, and they hope to produce within the first year sponges to a value exceeding £100,000. In the opinion of Mr. Marx, who which is to raise the salaries of college professors. Sayre is connected with Williams college, and he said it was the aim of that institution to invest in brainy teachers rather than handsome buildings.

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